167

(1)

Supreme Court, U.S.
FILED

No. 10-182

AUG 2 - 2010

In The OFFICE OF THE CLERK

Supreme Court of the United States

McHenry Larsen
Petitioner

v.

The State of Illinois

Respondent

On Petition For Writ of Certiorari
To The Illinois Supreme Court

PETITION FOR WRIT OF CERTIORARI

McHenry Larsen
2269 S. Wolf Rd.
DesPlaines, IL
60018
773-630-9328

QUESTIONS PRESENTED

I. Whether 18 USCS, 2701 through 2703 otherwise known as a portion of the Electronic Communications Privacy Act provides or prohibits a means for a Criminal defendant to obtain contents of emails and associated customer information that he is the addressee or intended recipient of by means of a trial subpoena or court order in order to provide a complete defense or does 18 USCS 2701, 2702,2703 and 2704 trump the compulsory clause of the Sixth Amendment in that a provider may refuse such a request?

II. Whether the procedure in this instant case effectively denied the accused rights to a speedy public trial, assistance of counsel, rights to confront witness, rights to compel witness in his favor and other rights associated to Due Process as guaranteed the accused in the Fifth and Sixth Amendments of the Federal Constitution made applicable to the states through the due process clause of the Fourteenth Amendment?

III. Whether a state court of intermediate appellate review erred in allowing the State's Motion to Dismiss Appeal for Mootness and Lack of Jurisdiction effectively barring meritous review of Petitioner's appeal consisting of numerous claims of violations of his rights as guaranteed in the Fifth, Sixth and Fourteenth amendments of the United States Constitution?

IV. Whether the Opinion of the Illinois Supreme Court in *People v. Woolsey*, 139 Ill. 2d 157, 163 (1990) conflicts in spirit with a Federal opinion when it solidified the means to circumvent the very essence of *Klopfer v. North Carolina* (1967), 386 U.S. 213, 18 L. Ed. 2d 1, 87 S. Ct. 988 in drawing support that the neither the entry of a Nolle Prosequi or an order striking the complaint with leave to reinstate were not final orders and thereby not subject to review? Does this rational not further limit the accused opportunity to exonerate himself?

Parties to the Proceeding

The Petitioner, McHenry Larsen acting on his own behalf Pro Se. The Petitioner has been ProSe through Appellate action 09-0229, People v. McHenry Larsen and Illinois Supreme Court action 109627, People of the State of Illinois v. McHenry Larsen. The People of the State of Illinois are party to all previous action. Google, Inc. through representation is of record an opposing litigant to discovery in both the Circuit court and Appellate Court. Cook County States Attorney, Anita Alverez et al was an active respondant in the Appellate action. Hon. Lisa Madigan Illinois Attorney General, Anita Alverez Cook County State's Attorney and Google Inc. through their attorneys were inactive parties noticed in the Illinois Supreme Court action 109627.

Corporate Disclosure Statement

Pursuant rule 29.6 the Petitioner verifies that no corporate entity
is petitioning within this action and furthers that no parent or publicly held company is involved in bringing this petition.

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Statement of Authorities

Cases

Ferguson v. Chicago 213 Ill, 2d 94 ;820 N.E. 2d 455(2004).....7

Klopher v. North Carolina (1967) 386 U.S. 213, 18L. Ed. 2d 2, 87 S. Ct. 988.....I

People V. Tannenbaum, 218 Ill App. 3d 500, 502 (2nd Dist. 1919).....7,10

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Other Authorities

18 U.S.C.S. 2701-2703.....7,10
28 U.S.C 1254(1).....1
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Illinois Constitution Article 1 Section 2.....6
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725 ILCS 101 5/101(d).....6,9

Opinions Below

To the best of the Petitioner's knowledge there have been no
opinions rendered in the previous actions. The unreported order of the First District Appellate Court of the State of Illinois allowing the State's Motion to Dismiss for Mootness and Jurisdiction is at App. 2a. The unreported order of the Illinois Supreme Court denying Petitioner's Motion for Leave to Appeal is at App. 3a. The unreported order of the Illinois Supreme Court denying motion by petitioner, pro se, for leave to file motion for reconsideration of the Order denying petition for leave to appeal, a matter of discretionary review, is at App. 2a.

JURISDICTION

On May 4, 2010 the Illinois Supreme Court denied the Petitioner's Motion to reconsider his petition for leave to appeal
thereby exhausting chance for remedy within the state court of last resort. Under 28 U.S.C., 1254(1) the Jurisdiction of this Court is invoked.

CONSTITUTION AND STATUTES

The texts partial or whole of the following are in the Appendix: U.S. Const., Amends. II, V, VI and XIV. Illinois Const. Article 1 sects. 2,8 and 13. 18 U.S.C. 2702 and 2703, Spec. 18 U.S.C. 2702(b)(1). 725 ILCS 101 5/101-1(d). Federal Rules of Criminal Procedure, Rule 48(a)

STATEMENT OF THE CASE

(i) **Proceedings in the Courts Below**

On January 19, 2008, within the Circuit Court of Cook County, the accused was charged with one count of disorderly conduct, a misdemeanor with two additional counts added on April 8, 2008. On May 19, 2008 a subpoena for the accused own email was served upon Google, Inc., the parent of Gmail. On June 23, 2008, the Court set the matter for trial and Ordered Production and preservation upon Google, inc. for emails subject to subpoena. Google resisted and the Accused through counsel drafted a Petition for rule to show cause asking for compliance and fees for the action needed for bringing action and a briefing schedule was established. On August 19, 2008 an Agreed Order was drafted requiring Google to produce subject email at the next hearing date of September 3, 2008 for an in camera inspection. New counsel for the accused filed their appearance and served it upon the State in open court as well. Google, Inc. presented numerous arguments as to why they could not be compelled to produce emails for the defense of accused who was the intended recipient or addressee of subject email. The accused argued that the email was subject to subpoena and court order and that subject email would prove false statements made by the complaining witness to law enforcement and further impeach prior testimony by the complaining witness.

On August 22, 2008, the accused while attempting to secure copies of an previous order by the court from the clerks office learned quite by chance that his case was at that moment " in court" and immediately proceeded to the court in which his case was being

heard only to learn upon his name being called that the State's attorney had emergency motioned his case for the purpose of presenting a motion to strike with leave to reinstate his case. The accused informed the court his attorney was not notified and objected to any proceeding without his presence. App. 8a. The state's attorney swore in the complaining witness and asked her if she wished to continue the prosecution to which she responded "no". The accused objected to the motion striking his case. The accused having not been afforded the opportunity to cross-examine asked the court to ask the state for reasoning behind the emergency motion to dismiss. The court responded " I don't care".App 8a The accused unfamiliar with legal terms offered that the state was trying to suppress evidence and again was met with indifference by the court. The accused again objected to any proceeding without his attorney present to which the court granted the motion by the state to strike the charge and offered the accused a chance to return with his attorney at a later date.App 8a The record within Google, inc's subsequent pleading "Google's Emergency Motion to Strike on Grounds of Mootness" provides that promptly after the State's motion to SOL a charge against the accused it contacted Google inc and informed them not to bring the subject email to scheduled hearing date of September 3. Google motion furthers that a second call was made to them by the State's attorney offering legal advice that it concurred that as the case was dismissed the Petition by the Accused for rule to show cause would be moot and again advised Google, inc. not to produce subject emails previously ordered. .

September 3, 2008, The accused appeared with his attorney and files a response to Google's Emergency Motion to Strike on Grounds of Mootness. Little oral argument is heard or allowed. The Court grants Google motion to strike the accused petition, orders evidence to be preserved for 161 days, a written speedy trial demand is included and for some reason the entire order is dated non pro tunc august 22, 2008 App 5a Defendant's counsel of record objects to the Prior proceeding and offers reasoning as to how such an entry of SOL prejudiced the accused. Defendant's counsel states he received no notice of prior proceeding,

September 19, 2008, the accused having learned that two charges still remain pending against him schedules a hearing date of September 30, 2008 to address concerns of remaining charges and again to object to the prior entry of SOL of a charge. On September 30, 2008 the Accused appeared and his name was not called til the end of the call after the judge had departed where and when he was informed by the State's attorney that his cause would not be heard and that his case was dismissed and that the Defendant cannot motion up a case. October 22, 2008, The accused secures new counsel to address remaining charges, appearance is filed and motion filed.

October 23, 2008, the accused appears with counsel and obtains a Nolle Pros of the original charge that was previously SOL'd and a Nolle pros of the remaining two charges. A second written demand for speedy trial is made.

December 19,2008, The accused appears on a motion to reconsider the Order nolle prosequing charges of

October 23, 2008 and the Order dated non pro tunc August 22 as the order of Nolle Pros adversely affects the order preserving evidence. The motion outlined that the tolling of the Speedy Trial act differed between to two dispositions leaving the accused in peril without ability to present a complete defense if the charges were reinstated. The Court refuses to hear the motion and declares his order to stand. January 20, 2009 the Accused files a timely notice of appeal with the circuit court of cook county.

In the Appellate Court of Illinois First District:
On May 20, 2009, 09-0229, the Petitioner having met all obligation filed hi " Brief Argument and Appendix of the Defendant Appellant instanter", said brief being due on May 19, 2009. The Appellants brief argues that the circuit Court's denial to hear or grant Defendant's motion to reconsider and extend existing order for preservation of evidence denied the Constitutional right of a Defendant to present a complete Defense and the right of Confrontation as guaranteed in the Sixth Amendment U.S. and Article 1, section 8 of the Illinois Constitution.

The Appellant also argued that the proceeding on August 22, 2008 denied his right to counsel and Due Process when the court allowed proceedings to take place without proper notice to counsel and over the Defendant's objection. Arguing the Defendant has a right to counsel at all phases of a criminal proceeding as guaranteed in the U.S. Const. Amends. V, VI and XIV and Article 1 , Section 8 of the Illinois Constitution.

Additionally, Arguing in his brief the Appellant that the State's Attorney does not have unfettered

and absolute discretion to terminate any case they wish through the entry of an SOL or Nolle Pros and that such motion deemed capricious, vexatious or prejudices the Defendant does not serve public interest and tears at the very fabric that binds the possibility of a fair trial in an adversarial proceeding.

On September 25, 2009, the state filed " Motion to Dismiss Appeal for Mootness and lack of Jurisdiction. The state never filed a reply brief addressing the merits of the Petitioner's appeal said reply being due months earlier. The state failed to notice all parties that filed an appearance in the action, but prevailed. App. 4a The state relied heavily on *People v. Woolsey,* 139 Ill. 2d 157, 163. (1990) and *People v. Tannenbaum,* 218 Ill. App. 3d 500, 502 (2nd Dist. 1991) Supporting a position that Nolle Prosequi or SOL are not final orders therefore by strictly a mechanical operendi their appeal is not provided for by rule in Illinois.

On November 10, 2009, The Petitioner filed a timely "petition to Rehear the peoples motion to dismiss, which was promptly denied November 16, 2009. App 5a

On December 21, 2009,Praying for discretionary review, the petitioner filed a " Petition for leave to appeal " with the Supreme Court of Illinois, No. 109627. That Petition was denied March 24, 2010, a copy of the unreported order is at (App. 3a)

On April 27, 2010 coupled with new information the Petiioner filed a motion for leave to file a motion to reconsider the order denying petitioner's Petition for leave to appeal. That motion was promptly denied May 4, 2010 (App at 1a)

(ii) **Statement of Fact**

The United States Consitution provides in the Fifth amendment that no person shall be deprived life, liberty or property without Due Process of law. The Sixth Amendment provides ;

> "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein
> a crime shall have been committed, which district
> shall have been previously ascertained by law...
> ...; to be confronted with witness against him ; to have compulsory process for obtaining witness in his favor, and have the assitance of counsel for his defense. "

The due process clause of the Fourteenth Amendment makes these rights obligatory on the States. The Illinois Constitution
Article 1 Section 2 provides that no person shall be deprived of life liberty or property without due process of law nor be denied equal protection of the laws.
Article 1 Section 8 provides:

> 'In criminal prosecutions, the accused shall have the right to appear in person and by counsel; *** to be confronted with witness against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedypublic trial by an impartial jury of the county in which the offense is alleged to have been committed."

The Illinois Code of Criminal Procedure 725 ILCS 101 5/101-1(d) Provides for a just determination of every criminal proceeding by a fair and impartial trial and adequate review;

(App 6a) Illinois Code of Criminal procedure does not contain a reference to the terms Nolle Prosequi, SOL or any deviation thereof.

Federal Rules of Criminal Procedure 48(a) reads: The government may, with leave of court, dismiss an indictment, information, or complaint. The government may not dismiss the prosecution during trial without the defendant's consent. The amendment to this rule in which the addition of the term "with leave of the court" was with purpose to limit the unfettered common law assumption that the attorney general had unquestionable authority to enter a nolle prosequi in any action as that power action had been deemed to at times violate constitutionally guaranteed rights of a the accused.

18 USCS, 2702(b)(1) states a provider described in subsection (a) may divulge the contents of a communication—(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

A reasonable common man determines the Constitutions are the Supreme law of land and that no law can be unconstitutional through clear unambiguous language that all of the above have reasonable purpose or effect.

ARGUMENT

THE WRIT SHOULD BE GRANTED TO AFFIRM AND GIVE UNIFORM UNAMGIGUOUS

GUIDANCE AS TO THE RIGHTS CONSIDERED MOST FUNDEMENTAL TO THE CITIZENS OF THIS NATION. THE FRAMERS INTENT AND THE CITIZENS EXPECTATIONS UPON WHICH EACH STATE ENTERED INTO AGREEMENT WAS TO PROTECT THE COMMON MAN FROM JUST SUCH OPPRESSIVE MEASURES. THIS COURT MUST PROTECT AND ENFORCE THE WORDS OF THE CONSTITUTION AS RIGHTS OF THE CITIZEN.

The Constitution and the Bill of Rights were not drafted and ratified to be considered discretionary or arbitrary.

The common practice of Nolle Prosequi or Striking with Leave to Reinstate has strayed far from its intended purpose and in doing so has become a detriment to anglo-american Jurisprudence. *Ferguson v. Chicago* 213 Ill, 2d 94; 820 N.E.2d 455 (2004) " *** after Ferguson had appeared in court nine times, the assistant State's Attorney who was prosecuting the case concluded the arresting officers had lied. The assistant State's Attorney therefor requested that the charges be 'Stricken with leave to reinstate,' or SOL'd." Further within that opinion " The officers also gave false statements that Ferguson had resisted arrest and struck one of the officers in the chest." Upon the entry of SOL Ferguson's attorney immediately made a demand for a speedy trial, but no trial was ever commenced. The petitioner contends that the purpose of a public trial are two fold in that the public be aware of the actions of the State and also that the public be witness for the accused that he is treated fairly in accordance with the laws governing

such a proceeding. In this case instant the accused appeared Ten times prior and the complaining witness had appeared on only two of those instances as she was excused by the court until needed. The State moved to Emergency Motion to SOL a charge against the Accused, presented and swore in a witness without allowing the accused an opportunity to cross examine. The accused pleaded to the court to ask the State for reasoning for the Dismissal which the Court denied to do stating " the state can dismiss any charge it wants" The Accused objected to proceeding without notice to or his counsel or his counsel present, the court proceeded. The Accused stated his concern of prejudice of his defense that the state was trying to prevent the flow of evidence to him. This is supported by the fact that the State telephoned a third party subject to an order to produce emails, Google, Inc. and informed them not to bring the ordered evidence to court and further gave legal advice to the third and private party that the State believes the order to be now moot and not to comply. The proceeding of August 22, 2008 in fact denied almost every right guaranteed a Defendant in a criminal proceeding. As remedy he sought to review these actions and encountered an almost mechanical process in the Appellate courts by which the State escapes review by the non final nature of an order to Nolle Pros or SOL a charge. Although Article 1 Section 8 of the Illinois Constitution provides for " ***a speedy public trial by an impartial jury of the county in which the offense was committed." And Article 1 Section 2 guarantees " ***due process of law nor be denied the equal protection of the law."

725 ILCS 5/101-1(d) Provides for the just determination of every criminal proceeding by a fair and impartial trial and adequate review. It is clearly understood that the rights of the accused may be waived by the accused perhaps as part of a plea bargain or for various reasons rationalized at the discretion of the accused, but if he does not waive these rights and instead demands them the Petitioner believes the clear unambiguous language invokes them. The Federal Government has amended it's rule regarding entry by the government for a nolle Prosequi by adding the term "with leave of the court" to rule 48(a) and the petitioner believes that to be good law and in harmony with the framers vision. Subsequent state law and opinions nationwide have begun to adopt such reasoning. Decisions that relay that the government must good reason and that the court may act as a check and balance against the once absolute authority of the Attorney general under common law premise. The State of Illinois as clearly displayed often does not conform in action with what has been established into law. The criminally accused shall enjoy a compulsory process to compel witness in his favor. The Petitioner argues that the courts within the state of Illinois erred in not enforcing both subpoena and Court order served upon Google, Inc. for the production of emails cornerstone not only for his defense but for future defense against false accusations. Google, Inc/ gmail is arguably is if not factually the largest email provider in this nation and within the pleadings of this case instant they have adopted a policy and belief that they are not subject to discovery requests by a criminal defendant through both trial

subpoena and court order. Google, inc. who has participated in advisory conferences with this nations legislature in recommending changes to the Electronic Communications Privacy Act and it components known as 18 USCS 2701-2704 has stood fast that it may arbitrarily dispense discovery at its discretion. Holding in their pleading that the provisional exceptions allowing disclosure without even a subpoena also infers a choice on their part and if Google chooses it may marry that choice to the protections of the prohibitionary features of the act. Google Inc has made reference within pleadings of this case instant that it is not subject to subject to the Due Process clause or Compulsory clause of the Sixth amendment. Google, Inc. in pleadings of this case instant had
argued criminal discovery and civil discovery are not different. Millions of citizens use Google services both directly and indirectly sometimes not even being aware of the involvement of this service provider and it is great public interest to the internet users and providers that a matter so fundamental as discovery for a criminal defendant be clarified as to coincide with the rights constitutionally guaranteed to the criminally accused. The petitioner argues that the ECPA can in no way trump the inherent validity and authority as guaranteed in the Fifth, Sixth and Fourteenth Amendments of the United States Constitution.

CONCLUSION

The petitioner premises this conclusion with and apology to this Court and this Nation for not being

able to secure competent counsel to bring this Petition. The Petitioner further apologizes for not being able to further support and argue additional aspects of this case instant. As the actions in this case instant are of such extreme conflict with so many established principles as to indicate conditions have strayed so far as to be of alarming public interest. The common law practice within this nation seems to obfuscated that which was once so fundamental in the eyes of the framers of this nations constitution and it is for this reason that this Court should grant this Writ.

Respectfully Submitted

McHenry P. Larsen Pro Se
2269 S. Wolf Rd.
DesPlaines, IL 60018
773-630-9328

APPENDIX

Unreported Order Denying reconsideration in the Supreme Court of Illinois.....3a

Unreported Order denying Petitioner's Petition for Leave to Appeal, Illinois Supreme Court.....4a

Unreported Order Allowing States Motion to Dismiss, First District Appellate Illinois.....5a

Unreported Order Denying Appellant's motion To rehear states motion to dismiss, Illinois Appellate First District.....5a

18 U.S.C. 2702(b)(1).....6a

725 ILCS 101 5/101(d).....7a

United States Constitution, Amendent V.....7a

United States Constitution Amendment VI.....8a

United States Constitution, Amendment XIV Section 1.....8a

Illinois Constitution, Article 1 , Section 2.....8a

Illinois Constitution, Article 1 , section 8.....8a

Record of Proceeding August 22, 2008 .....9a

Seal of the Supreme Court
State of Illinois Aug. 26 1818
Supreme Court Of Illinois
Supreme Court Building
Springfield 62701

May 4, 2010

Mr. McHenry Larsen
2269 S. Wolf Rd.
DesPlaines, IL 60018

In re: People of State of Illinois, respondant,
v. McHenry Larsen, Petitioner
No. 109627

Today the following order was entered in the captioned case:
Motion by petitioner, pro se, for leave to file a motion for
Reconsideration of the order denying petition for leave to appeal. Motion Denied

Order entered by the Court.
This Courts Mandate has been issued forthwith to the Appellate Court, First District.

Very truly yours,
s/ Julianne Hornyak
Clerk of the Supreme Court

Cc: Hon. Lisa Madigan
Hon Anita Alverez
Mr. Laurence Oleksa

109627

Supreme Court Of Illinois
Clerk of the Court
Supreme Court building
Sprinfield, Illinois 62701
(217) 782-2035

March 24, 2010

McHenry Larsen
2269 S. Wolf Rd.
DesPlaines, Illinois 60018

No. 109627 – People of the State of Illinois, respondent,

v. McHenry Larsen, Petitioner. Leave to Appeal, Appellate Court, First District.

The Supreme Court today DENIED the petition for leave
To appeal in the above entitle cause.

The Mandate of this Court will issue to the Appellate Court
On April 28, 2010

1-09-0229

IN THE

APPELLATE COURT OF ILLINOIS

FIRST JUDICIAL DISTRICT

People of the State of Illinois Plaintiff-appellee v. McHenry Larsen, Defendant-Appellant	)))))))))	Appeal from the Circuit Court of Cook County, Illinois No. 08-3000596 The Honorable Judge Hyman Riebman Presiding

ORDER

This cause coming before this court on Motion of the people of the State of Illinois, and all parties having been notified, and the Court being fully advised in the premises,

It is Hereby Ordered That the People's Motion to Dismiss the Appeal is Allowed.

Anita Alverez
State's Attorney
Jennifer N. Bruzan
Assistant State's Attorney
Room 309
Richard J. Daley Center
Chicago, Illinois 60602
(312)603-5496

s/ justice

s/ justice

s/ justice

ORDER ENTERED
oct 20 2009
AppellateCourt, First District
STEVEN M. RAVID CLERK OF THE APPELLATE OURT
FIRST DISTRICT

IN THE APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
Appellate Court No. 09-0229

State of Illinois	)	No 08 3 00059601
	)	Appeal from Third
v.	)	Circuit Court of
	)	Cook County
McHenry Larsen	)	Hon. Hyman I. Riebman

ORDER

On Appellant's Motion to Rehear Appellee's Motion to Dismiss for Mootness and Lack of Jurisdiction and for good cause shown,
IT IS HEREBY ORDERED that the Appellant's motion to rehear Appellee's motion to Dismiss for Mootness and Lack of Jurisdiction is DENIED

ORDER ENTERED s/ justice
Dated: Nov 16 2009 2009
Appellate Court, First District s/ Justice

McHenry Larsen
2269 S. Wolf Rd.
DesPlaines, IL 60018
815-261-8419

s/ Justice

18 U.S.C. 2702(b)(1)

2702(b) **Exceptions for disclosure of Communications.** A provider described in subsection (a) may divulge the contents of a communication—

(1) to an addressee or intended recipient of such communication or an agent of such addressee or intended recipient.

725 ILCS 101 5/101-1(d)

General Purposes
General Purposes. The Provisions of this code shall be construes with the general purposes hereof, to:
(d) Provide for the just determination of every criminal proceeding by a fair and impartial trial and adequate review; and

United States Constitution, V Amendment

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district will have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted by witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

United States Constitution, Amendment XIV, Section1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Illinois Constitution Article 1 section 2

No person shall be deprived of life, liberty or property without due process of law nor be denied the equal protection
of the laws.

Illinois Constitution, Article 1, Section 8

In criminal prosecutions, the accused shall have the right to appear and defend in person and by counsel; to

demand the nature and cause of the accusation and have a copy thereof; to be confronted with the witnesses against him or her and to have process to compel the attendance of witnesses in his or her behalf; and to have a speedy public trial by an impartial jury of the county in which the offense is alleged to have been committed.

STATE OF ILLINOIS)
County of Cook) SS:

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS MUNICIPAL DEPARTMENT-THIRD MUNICIAPAL DEPARTMENT

THE PEOPLE OF THE STATE)
OF ILLINOIS,)
Plaintiff,)
No.################
Vs.)
McHENRY LARSON,)
Defendant)

Report of proceedings had at the hearing in the above-entitled cause before honorable Hyman Riebman, Judge of said court, on the 22nd day of August, 2008.

PRESENT:
HONORABLE RICHARD A. DEVINE
STATE"S ATTORNEY FOR COOK COUNTY, by:
MR. MATT FAKHOURY,
ASSISTANT STATE'S ATTORNEY,
Appeared on behalf of the People;

The Defendant Appeared Pro Se.

Mary N. Leahy
Official Court Reporter
License No. 084-002409

THE CLERK: McHenry Larsen

THE COURT: How are we going to proceed with this case?

MR. FAKHOURY: Judge, may I get a moment to talk with the complaining witness in this case?

(whereupon this case was passed)

THE CLERK: McHenry Larsen

THE COURT: How are we going to proceed?

MR. FAKHOURY: Judge, may I have the witness sworn in please?

THE COURT: PLEASE RAISE YOUR RIGHT HAND AND BE SWORN.

(witness duly sworn)

MR. FAKHOURY: Ma'am, can you please state your name for the court record?

A. Sarah DiLorenzo

Q. And ms Dilorenzo, you had a conversation with Mr. Adam Klugman from the state's attorneys office, is that correct?

A. Yes.

Q. You also had a conversation with me outside the court a few minutes ago?

A. Yes.

Q. Is it your wish to continue to proceed and continue this prosecution of the Defendant?

A. No

MR. FAKHOURY: Judge, it will be a motion to State SOL.

THE COURT: Do you wish to proceed without your lawyer, sir?

THE DEFENDANT: No, sir, not at all. And I present the appearance of my lawyer dated the 19th - -

THE COURT: I know he is not here. It's okay for you to proceed then.
THE DEFENDANT: No.
THE COURT: Okay it is off the call, leave to reinstate. Is that correct?
MR. FAKHOURY: Yes, Judge. My Understanding - -
THE DEFENDANT: Here is the appearance.
MR. FAKHOURY: My understanding is that he was just indicating that he wants his attorney here.
THE DEFENDANT: CORRECT
THE COURT: Okay . When can your lawyer be here?
MR. FAKHOURY: Judge, we contacted his attorney earlier today.
THE COURT: He is entitled to have his lawyer. They're dismissing the charges against you. You do not want them to do that?
THE DEFENDANT: Not until my attorney is present, I am handing the appearance for my attorney.
THE COURT: Well, Your Lawyer has already filed an appearance.
THE DEFENDANT: They did not contact him.
MR FAKHOURY: Judge - -
THE COURT: Mr. Fakhoury, did you talk to his lawyer?
MR. FAKHOURY: I did, and Mr. Klugman did. We told him. He said we could go ahead and dismiss this case without him having to come here. He's busy doing other matters. Because this was late notice, if you will, he wanted to resolve this as soon as possible.
THE COURT: Okay, well the Defendant doesn't want the charges dismissed against him. When is a good day for you to come back with your lawyer, sir?

THE DEFENDANT: Well, considering I was with him until 4:30 last night - -
THE COURT: I don't care. Just tell me when you - -
THE DEFENDANT: He departed- -
THE COURT: Just tell me - -
THE DEFENDANT: Okay, sometime - - September 3rd
THE COURT: okay.
MR. FAKHOURY: Judge, if that's the case, we ask that you still admonish the defendant to have no contact with the complaining witness until termination of the case.
THE COURT: Okay, has there ever been a special condition of bond?
MR FAKHOURY: There was, and it was violated by this defendant, and there was a hearing on this violation. The Defendant was taken into custody and he posted - - new bond was set.
We ask that you continue and remain throughout the pendency of this case.
THE COURT: Okay, First of all the State has aright to dismiss any case they want. This case will be stricken off call, leave to reinstate. And on behalf of the Defendant there will be a demand for trial. Okay, if you and your lawyer want to come back and ask that the charges be reinstated so you can be prosecutes, come back any day you' like. Okay?

THE DEFENDANT: Excuse me, Your Honor. I'm not clear - -
THE COURT: The Charges are dismissed. Is that okay?
THE DEFENDANT: No, Ask him why the charges are dismissed.

THE COURT: I don't care
THE DEFENDANT: He's trying to suppress evidence.
THE COURT: Okay.

(Which were all the proceedings had in the above-entitled case)